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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/523,079	03/10/2000	Brian L. Gerhardt	13DV13466	4477

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EXAMINER	
O'CONNOR, GERALD J	

ART UNIT	PAPER NUMBER
3627	6

DATE MAILED: 08/26/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.	Applicant(s)
09/523,079	Gerhardt
Examiner	**Art Unit**
O'Connor	3627

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *three* MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on *June 17, 2002 (Amendment "A")* .

2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) *1-3, 6-9, and 12* is/are pending in the application.

4a) Of the above, claim(s) *none* is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) *1-3, 6-9, and 12* is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All b) ☐ Some* c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____ .
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) ☒ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

a) ☐ The translation of the foreign language provisional application has been received.

15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
4) ☐ Interview Summary (PTO-413) Paper No(s). _____
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other:

DETAILED ACTION

Preliminary Remarks

1. This second Office action has been prepared in response to the amendment and arguments filed by applicant on June 17, 2002 (Paper Nº 5), in response to the first Office action.

2. The amendment of claims 1 and 7, and the cancellation of claims 4-5 and 10-11, are hereby acknowledged.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless --
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

4. Claims 1-3 and 6 are rejected under 35 U.S.C. 102(a) as being clearly anticipated by Harrington (U.S. 5,895,454).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claims 7-9 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harrington (U.S. 5,895,454).

Harrington discloses a computerized method for distributing parts, which method clearly anticipates all of the claimed method steps of the instant invention, except that Harrington does not specifically disclose the step of further sorting the parts in at least one inventory category into a plurality of sub-inventory categories, based upon part condition.

However sorting an inventory of a particular type of part for sale into a plurality of sub-inventory categories, based upon part condition, such as "new" and "used," or "excellent," "good," and "fair," is a well known, hence, obvious method step to follow in listing parts for sale, since the value of parts in different conditions would be expected to sell for different prices.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have modified the method of Harrington so as to further sort the parts in at least one inventory category into a plurality of sub-inventory categories, based upon part condition, as is well known to do, in order to allow purchasers more flexibility in purchasing parts by allowing

the purchasers to spend more or less for a part, based on the purchaser's requirements for acceptable condition, since so doing could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.

Response to Arguments

7. Applicant's arguments filed June 17, 2002 have been fully considered but they are not persuasive.

8. In response to applicant's arguments regarding apparatus claims 1-3 and 6, that the particular non-functional descriptive material contained in the database of Harrington, as disclosed, fails to include the "condition" of the parts, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

9. Applicant's arguments with respect to method claims 7-9 and 12 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to the disclosure.

11. Applicant's amendment necessitated any new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

12. PLEASE TAKE NOTICE that the Technology Center and Group Art Unit numbers for prosecution of this application have been changed. The Technology Center number is now *3600*. The Group Art Unit number is now *3627*.

13. Any inquiry concerning this communication, or earlier communications, should be directed to the examiner, Jerry O'Connor, whose telephone number is (703) 305-1525, and whose facsimile number is (703) 746-3976.

GJOC

August 22, 2002

8/26/02

ROBERT P. OLSZEWSKI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600